

# Texas Produce Association

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Dockets Management Branch (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, Room 1061  
Rockville, Maryland 20852

Office of Information and Regulatory Affairs  
Office of Management and Budget  
New Executive Office Building  
725 17<sup>th</sup> St. NW, Room 10235  
Washington, D.C. 20503

Docket Number: ON-0278

The Texas Produce Export Association and the Texas Produce Association are writing in opposition to the proposed prior notice requirement of noon the day before fresh fruits and vegetables can be entered into the United States.

We all want to protect the security and border integrity of this country. But in pursuit of that objective any proposed changes to existing policy should be subjected to an obvious litmus test: Will the change enhance national security and is any disruption that will result worth the benefits?

These questions are easy to ask and difficult to answer. But as produce importers and agents for such importers we are painfully aware that if this so-called 24 hour rule goes into effect, there will be substantial upheaval in trade along the U.S. border with Mexico, and there will be real damage done to our industry, to producers and suppliers in Mexico, and to the U.S. public.

We suspect that the Food and Drug Administration, in its commendable desire to protect the public and minimize the possibility of terrorist acts involving food, has assumed that a "one-size-fits-all" rule will be the most expeditious and successful way of hardening the

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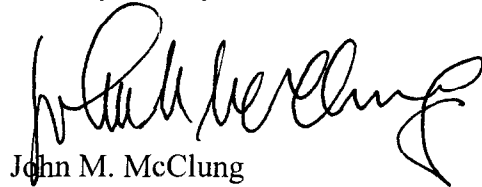
borders against a wide range of threats, most hypothetical. The Agency has seemingly ignored, in this calculation, the practical consequences of delaying the movement of highly perishable product, much of which is harvested and moved to market within 24 hours or less. Fresh fruits and vegetables are not like nonperishable and/or manufactured goods; they must be marketed when they are ready, and the "cold chain" must be maintained from harvest to retail to minimize spoilage and eliminate the likelihood that food borne human pathogens will be present.

The FDA, in its eagerness to meet its perceived homeland security obligations, is ignoring the realities of the industry, the economic consequences of its proposal, and the bruising to already frayed U.S.-Mexico relations that the rule would inevitably cause. The Agency seems not even to be aware of the shipment data it already has available to it through Customs Operations and Administrative System for Import Support (OASIS), and of the potential for improving that system so additional data bases are not necessary.

To our knowledge the FDA has made no effort to conduct a thorough study of the consequences to the industry in both countries, of the implications to consumers, and perhaps most important, of the security benefits. It simply has proposed this clumsy rule to comport with the Bioterrorism Act of 2002. Where are the security benefits catalogued? Where is the justification spelled out so that those of us who will be impacted can come to grips with the necessity?

We vigorously recommend the FDA initiate a much more systematic, dispassionate evaluation of the goals, available tools, and economic and political consequences of its proposal before any expanded prior notice requirement is put in place for perishables. In the end, any actions that are taken should do more good than harm, and in that context, the current proposal falls far wide of the mark.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "John M. McClung". The signature is fluid and cursive, with a large, stylized initial "J" and a long, sweeping underline.

John M. McClung  
President and CEO